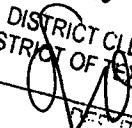


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
MAR 1 2023
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY 

AK MEETING IP LLC,
PLAINTIFF,

V.

ZOHO CORPORATION,
DEFENDANT.

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CAUSE NO. 1:22-CV-01165-LY

ORDER ON REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Before the court in the above-referenced cause are: (1) Defendant Zoho Corporation's Motion to Dismiss Under Rule 12(b)(6), filed June 27, 2022 (Doc. #15); (2) Plaintiff's Response to Defendant's Motion to Dismiss Under Rule 12(b)(6), filed July 11, 2022 (Doc. #18); and (3) Defendant Zoho Corporation's Reply in Support of its Motion to Dismiss Under Rule 12(b)(6), filed July 18, 2022 (Doc. #19), which were referred to a United States Magistrate Judge for Report and Recommendation. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. App'x C, R. 1(d). The magistrate judge filed a Report and Recommendation on February 6, 2023 (Doc. #36), recommending that this court grant Defendant Zoho Corporation's Motion to Dismiss Under Rule 12(b)(6), filed June 27, 2022 (Doc. #15), and dismiss Plaintiff's direct infringement claims without prejudice. Because the parties have agreed to dismiss Plaintiff's indirect infringement claims without prejudice, Plaintiff's direct infringement claims are the only remaining claims pending before this court. *See* Doc. #15 at p. 22 ("AK Meeting agreed to dismiss the indirect infringement claims without prejudice to repleading after sufficient discovery.").

Pursuant to 28 U.S.C. § 636(b) and Rule 72(b) of the Federal Rules of Civil Procedure, a party may serve and file specific, written objections to the proposed findings and recommendations of the magistrate judge within 14 days after being served with a copy of the Report and Recommendation, and thereby secure a *de novo* review by the district court. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a Report and Recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).

Plaintiff filed objections to the Report and Recommendation on February 20, 2023 (Doc. #40). In light of Plaintiff's objections, the court has undertaken a *de novo* review of the record and applicable law in this case.

Plaintiff objects that the Report and Recommendation improperly goes beyond the pleadings by looking at the prosecution history of the patents-in-suit. Because a court may take judicial notice of government records when resolving a Rule 12(b)(6) motion, Plaintiff's objection is overruled. *See Lovelace v. Software Spectrum*, 78 F.3d 1015, 1017-18 (5th Cir. 1996); *see also Jenny Yoo Collection, Inc. v. Watters Design, Inc.*, No. 3:17-CV-3197-M, 2019 WL 3330025, at *5 n.8 (N.D. Tex. June 6, 2018).

Plaintiff objects to the Report and Recommendation "for alleging that Plaintiff did not show the products Zoho Meeting and Zoho Workplace are integrated." This court agrees with the Magistrate Judge that Plaintiff's Amended Complaint does not sufficiently plead that the products in issue are integrated. The court does not agree with Plaintiff that this finding requires Plaintiff to use the word "integrated" in its pleading. Nothing in the Amended Complaint (or its incorporation

exhibits) sufficiently pleads or demonstrates that the three accused products are functionally integrated, or even that they work together to meet the “looped message limitation.” *See, e.g., Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1353 (Fed. Cir. 2021). Plaintiff’s objections are overruled.

Plaintiff objects to the Report and Recommendation “for stating that the complaint states nothing more than threadbare recitals.” This court agrees with the Magistrate Judge’s finding that Plaintiff has failed to state a claim for which relief may be granted. Therefore, Plaintiff’s objection is overruled.

Having considered the complaint; the motion; the objections; the case file; and the applicable law, the court will overrule the objections and will accept and adopt the report and recommendation for substantially the reasons stated therein.

IT IS ORDERED that Plaintiff’s Objections to Magistrate Judge’s Report and Recommendation for Granting Defendant’s Motion to Dismiss, filed February 20, 2023 (Doc. #40), are **OVERRULED**.

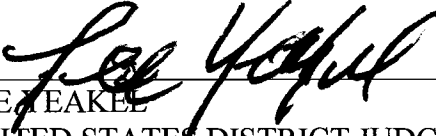
IT IS FURTHER ORDERED that for substantially the reasons stated therein the Report and Recommendation of the United States Magistrate Judge, filed February 6, 2023 (Doc. #36), is **ACCEPTED AND ADOPTED**.

IT IS FURTHER ORDERED that Defendant Zoho Corporation’s Motion to Dismiss Under Rule 12(b)(6), filed June 27, 2022 (Doc. #15), is **GRANTED TO THE FOLLOWING EXTENT**: Plaintiff’s claims against Defendant are **DISMISSED WITHOUT PREJUDICE**.

IT IS FINALLY ORDERED that Plaintiff shall file an amended complaint **on or before April 3, 2023**. Plaintiff’s failure to file an amended complaint by the deadline imposed by this order

shall result in dismissal of the case for want of prosecution.

SIGNED this 15th day of March, 2023.



LEE A. EAKEL
UNITED STATES DISTRICT JUDGE